A

JOHAR MUSTAPHA

v.

PP

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FEDERAL COURT, PUTRAJAYA
ZAKI TUN AZMI CJ
ALAUDDIN MOHD SHERIFF PCA
HASHIM YUSOFF FCJ
[CRIMINAL APPEAL NO: 05-57-2008]

C

16 SEPTEMBER 2009

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in cannabis - Appeal against conviction and sentence - Actual possession of drugs - Presumption of trafficking - Whether appellant's*

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defence raised any reasonable doubt - Findings of fact - Totality of evidence - Whether enough to support charge of trafficking - Dangerous Drugs Act 1952, ss. 2, 37(da)

EVIDENCE: *Presumption - Drug trafficking - Presumption of trafficking - Whether totality of evidence enough to support charge of*

E

trafficking - Dangerous Drugs Act 1952, s. 37(da)

This was an appeal by the appellant against his conviction and sentence to death for trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). His

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subsequent appeal to the Court of Appeal was dismissed, resulting in the present appeal. On 2 May 1999 at about 9pm, PW5, who was with his friends at a food stall, noticed a white car go off the road while avoiding another vehicle. He saw the appellant emerge from the car. PW5 and his friends went to help the appellant but

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he acted rather strangely, shoving them away. They then returned to the food stall. Soon after, PW5 saw the appellant open the boot of the car, remove a blue package and throw it away. PW5 became suspicious and telephoned the police, who shortly arrived at the scene. The appellant began to run away but was

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apprehended. PW5 then narrated to the police what he had witnessed and pointed in the direction in which the blue package had been flung. The package was then recovered and found to contain 19,152 grams of cannabis. In his defence, the appellant denied that the package was in the boot of his car, that it

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belonged to him and that he was transporting it for the purpose of trafficking. The High Court judge, however, found the appellant guilty of trafficking and the Court of Appeal affirmed that finding.

Hence, the present appeal in which the appellant submitted that the trial judge and the Court of Appeal judges had erred in law and in fact in reaching their conclusions.

Held (dismissing the appeal, and affirming the appellant's conviction and sentence)
Per Alauddin Mohd Sheriff PCA delivering the judgment of the court:

(1) At the close of the prosecution's case, there was evidence that the appellant opened the boot of his car and took out the blue package containing the drugs and threw it away to a spot next to his car. There was evidence that the appellant, after his car skidded, had refused help from PW5 and his friends and had instead shooed them away. There was also evidence that the appellant was seen running away from the scene upon seeing the police arrive even before the discovery of the blue package containing the drugs. In the absence of any reasonable explanation by the appellant, the combined effect of the evidence was sufficient to make an affirmative finding that the appellant was in possession of the drugs. (paras 32, 33, 34 & 35)

(2) Since the prosecution had already prove actual possession of the drugs by the appellant and since the weight of the drugs exceeded 200 grams (cannabis), the presumption of trafficking as provided in s. 37(da) of the DDA ought to be invoked against the appellant. The act of the appellant in carrying or transporting a large quantity of drugs *ie*, 19,152 grams of cannabis, in the boot of his car amounted to the act of trafficking of the drugs as defined under s. 2 of the DDA. Therefore, looking at the totality of the evidence before the court, there was abundant evidence to support a charge of trafficking, with or without resorting to the presumption of trafficking under s. 37(da) of the DDA. *Ong Ah Chuan v. PP* (foll); *Mohamad Yazri Minhat v. PP* (foll). (paras 40, 41, 42 & 43)

(3) On the facts, there were no material contradictions in the prosecution's evidence. Indeed, there was no infirmity whatsoever in the concurrent findings of fact by the trial judge and Court of Appeal judges that would require appellate interference. (paras 51 & 52)

(4) The appellant's denial that he had taken out the blue package from the boot of his car and thrown it nearby was not credible, and neither was his defence that it was the police who had brought the blue package from nowhere. It was highly improbable to suggest that the police would have left the blue package containing 21 slabs of cannabis at that spot there and framed the appellant. The police had no reason or motive to do so. PW5 was an independent witness and had no reason to implicate the appellant. Thus, the appellant's story that he did not know of the blue package was highly improbable. The appellant's defence had failed to raise any reasonable doubt that he was in possession of, and trafficking in, the drugs. (paras 53, 54, 55, 56 & 57)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan oleh perayu terhadap sabitannya dan hukuman mati ke atasnya kerana mengedar dadah berbahaya di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Rayuan seterusnya ke Mahkamah Rayuan telah ditolak, mengakibatkan rayuan semasa. Pada 2 Mei pada kira-kiranya 9pm, PW5, yang berada dengan kawan-kawannya di satu gerai makanan, memerhati sebuah kereta putih menggelincir dari jalan sementara mengelak sebuah kenderaan lain. Beliau nampak perayu keluar daripada kereta. PW5 dan kawan-kawannya pergi untuk menolong perayu tetapi beliau bersikap agak ganjil, dan menolak mereka ketepi. Mereka kemudiannya kembali ke gerai makanan. Tidak lama kemudian, PW5 nampak perayu membuka but kereta, mengeluarkan satu pakej biru dan membuangkannya. PW5 berasa sangsi dan menalipon polis, yang tiba dengan cepat di tempat itu. Perayu mula melarikan diri tetapi telah diberkas. PW5 kemudiannya memberitahu polis apa yang dilihat olehnya dan menunjukkan arah di mana pakej biru itu telah dibuang. Pakej itu telah ditemui dan didapati mengandungi 19,152 gram kanabis. Dalam pembelaannya, perayu menafikan bahawa pakej itu berada dalam but keretanya, bahawa ia kepunyaannya dan bahawa beliau mengangkutnya untuk tujuan mengedar. Hakim Mahkamah Tinggi, walau bagaimanapun, mendapati perayu bersalah kerana mengedar dan Mahkamah Rayuan telah mengesahkan dapatan itu. Oleh itu, rayuan semasa di mana perayu menghujah bahawa hakim perbicaraan dan hakim-hakim Mahkamah Rayuan telah khilaf dalam undang-undang dan dalam fakta apabila mencapai keputusan-keputusan mereka.

Diputuskan (menolak rayuan, dan mengesahkan sabitan dan hukuman perayu)
Oleh Alauddin Mohd Sheriff PMR menyampaikan penghakiman mahkamah:

(1) Pada penghujung kes pendakwaan, terdapat keterangan bahawa perayu telah membuka but keretanya dan mengeluarkan satu pakej biru yang mengandungi dadah itu dan membuangkannya kepada suatu tempat di sebelah keretanya. Terdapat keterangan bahawa perayu, selepas keretanya menggelincir, telah enggan menerima pertolongan dari PW5 dan kawan-kawannya dan telah sebaliknya menghalau mereka. Terdapat juga keterangan bahawa perayu telah dilihat melarikan diri dari tempat kejadian setelah nampak polis tiba walaupun pakej biru yang mengandungi dadah itu belum dijumpai lagi. Dengan ketiadaan apa-apa keterangan yang munasabah oleh perayu, akibat penggabungan keterangan adalah mencukupi untuk membuat suatu dapatan afirmatif bahawa perayu mempunyai milikan dadah itu.

(2) Oleh kerana pendakwaan telah membuktikan milikan sebenar dadah itu oleh perayu dan disebabkan berat dadah itu melebihi 200 gram (kanabis), anggapan mengedar seperti yang diperuntukkan dalam s. 37(da) ADB seharusnya digunakan terhadap perayu. Tindakan perayu membawa atau mengangkut satu kuantiti besar dadah, iaitu 19,152 gram kanabis, di dalam but keretanya membuktikan tindakan mengedar dadah seperti yang ditetapkan di bawah s. 2 ADB. Oleh yang demikian, memandangkan keseluruhan keterangan di hadapan mahkamah, terdapat keterangan yang amat cukup untuk menyokong suatu tuduhan mengedar di bawah s. 37(da) ADB. *Ong Ah Chuan v. PP* (diikuti); *Mohamad Yazri Minhat v. PP* (diikuti).

(3) Berdasarkan fakta-fakta, tiada percanggahan material dalam keterangan pendakwaan. Malah, tidak ada apa-apa kelemahan dalam dapatan-dapatan fakta bersama oleh hakim perbicaraan dan hakim-hakim Mahkamah Rayuan yang memerlukan campur tangan rayuan.

(4) Penafian perayu bahawa beliau telah mengeluarkan pakej biru daripada but kereta dan membuangkannya ke tempat yang dekat tidak boleh dipercayai, dan pembelaannya bahawa polis telah membawa pakej biru dari entah mana juga tidak boleh

dipercayai. Ia sungguh tidak mungkin untuk mencadangkan bahawa polis telah tinggalkan pakej biru yang mengandungi 21 keping kanabis di tempat itu dan telah menganiayai perayu. Polis tidak ada sebab atau motif untuk berbuat demikian. PW5 ialah seorang saksi bebas dan tidak mempunyai apa-apa sebab untuk membabitkan perayu. Oleh itu, cerita perayu bahawa beliau tidak tahu tentang pakej biru adalah sungguh tidak mungkin. Pembelaan perayu telah gagal membangkitkan apa-apa keraguan munasabah bahawa beliau mempunyai milikan, dan mengedar, dadah itu.

Case(s) referred to:
Alcontara Ambross Anthony v. PP [1996] 1 CLJ 705 FC ***(refd)***
Andy Bagindah v. PP [2000] 3 CLJ 289 CA ***(refd)***
Chan Pean Leon v. PP [1956] 22 MLJ 237 ***(refd)***
Director of Public Prosecutors v. Brooks [1974] 2 All ER 840 ***(refd)***
Mohamad Yazri Minhat v. PP [2003] 2 CLJ 65 CA ***(foll)***
Ong Ah Chuan v. PP [1981] 1 MLJ 64 ***(foll)***
Parlan Dadeh v. PP [2008] 6 MLJ 19 ***(refd)***
PP v. Abdul Rahman Akif [2007] 4 CLJ 337 FC ***(refd)***
PP v. Munusamy [1980] 2 MLJ 133 ***(refd)***
Tan Kim Ho & Anor v. PP [2009] 3 CLJ 236 FC ***(refd)***
Warner v. Metropolitan Police Commissioner [1968] 2 All ER 356 ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 37(da), 39B(1)(a)

For the appellant - Kamarul Hisham Kamaruddin; The Chamber of Kamarul Hisham & Hasnal Rezua, M/s Ahmad Zaidi & Partners
For the respondent - Nurulhuda Nur'aini Mohd Noor DPP

[Appeal from Court of Appeal; Criminal Appeal No: J-05-56-2003]

Reported by Suresh Nathan

JUDGMENT

Alauddin Mohd Sheriff PCA:

Introduction

[1] The appellant was charged for an offence of trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (DDA) in the High Court at Muar.

[2] The said charge reads as follows:

> Bahawa kamu pada 2hb. Mei 1999, jam lebih kurang 10.10 malam di KM 132.5 Jalan Johor Bahru – Segamat, Cha'ah, dalam daerah Segamat, dalam Negeri Johor, telah didapati mengedar dadah berbahaya iaitu 19,152 cannabis dan dengan itu, kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum dibawah seksyen 39B(2) Akta yang sama.

[3] At the end of the trial the appellant was convicted on the said charge and sentenced to death.

[4] The appellant's appeal to the Court of Appeal against the said conviction by the High Court was dismissed. Hence the present appeal to the Federal Court.

Background Facts

[5] On 2 May 1999 at about 9pm, PW5 was seated at a food stall at Cha'ah located at the 132.5 km along the Johor Bahru – Segamat Road. He was with his friends.

[6] At about that time he (PW5) noticed a white car coming from the direction of Segamat towards Yong Peng go off the road while avoiding another vehicle. This happened across the road from where he was seated.

[7] He saw a man later identified as the accused (the appellant before us) emerge from the car. PW5 and his friends went towards the appellant. They wanted to help him. They were concerned to see if he was alright. But the appellant acted rather strangely. He shoved them away. They then returned to the food stall.

[8] Soon after, PW5 saw the appellant open the trunk of the car, remove a blue package and throw it away.

[9] He (PW5) became suspicious and telephoned the police.

[10] While making the phone call PW5 observed the appellant standing alone near the car.

[11] About half an hour later, a tow truck arrived at the scene but then moved away.

[12] Shortly after that the police arrived in a Land Rover. On seeing them the appellant began to run away. He was apprehended.

[13] PW5 then assisted PW6 (Corporal Rosli Hamid) who was among the police personnel who had arrived at the scene.

[14] He narrated to PW6 what he had witnessed and pointed in the direction in which the blue package had been flung. The package was then recovered. It was produced as exh. P6B at the trial.

[15] PW6 opened the package. From within it was recovered a substance which upon subsequent chemical analysis was found to be 19,152 grams of cannabis.

[16] Then one Halim bin Kadir, a friend of the appellant arrived at the scene in a red car and met PW6. Halim was there to help the appellant tow the car. Halim was also arrested but was released later as a search conducted on him and his car did not find anything incriminating.

[17] In his defence the appellant denied that the said package containing cannabis was in the boot of his car, that the said package containing cannabis belonged to him and that he was transporting the said package containing cannabis for the purpose of trafficking.

[18] The appellant however did not dispute the facts that his car skidded off the road at Cha'ah, that he was approached by the villagers who came to help him, that he drove them away as he did not require their help.

[19] The accused admitted opening the boot of his car but only to take out a jack and spanner to jack his car.

Findings Of The High Court

[20] In dealing with the evidence before him the learned trial judge in his judgment (see p. 46 of the appeal record) came to this finding of fact:

> The evidence in the instant case clearly proved that the package containing the said 21 blocks of cannabis was in the boot of a car, that at or about the 132.5 km Johor Bahru to Segamat Road, was traveling from the direction of Segamat towards the direction

> of Yong Peng, under the direction and control of the accused. The obvious question is whether the accused was aware that he was driving a car with a package containing cannabis in the boot. Obviously, the accused must be consciously moving drugs from one place to another, if he were aware that he was driving a car with a package containing drugs in the boot.

[21] In relation to the conduct of the appellant (see p. 46 of the appeal record) the learned trial judge found as follows:

> The evidence was that the accused drove away those persons who came to assist him. That conduct was strange, as a person involved in a motor accident does not ordinarily drive away even strangers, who came to render him assistance, even if he does not require their assistance. The accused might not have required the assistance of SP5 and friends. If that were the case, the normal conduct should be to turn down or decline the offer of assistance, but in the event not to eject SP5 and friends whose intention was not malevolent and whose presence at the scene was not any hindrance or was in the way of the accused.

[22] Dealing with the conduct of the appellant in running away when the police arrived the learned trial judge had this to say (see p. 47 appeal record):

> That conduct was also strange, as the accused was involved in only a minor road accident involving just him and his car, and given so there was really no reason for the accused to run from the scene … It was a police land rover that had arrived at the scene, and the persons who alighted … were policemen in police uniform. So what plausible reason was there for the accused to suddenly pick himself up from his squatting position and attempt to get away from the scene …? Rather, that conduct of the accused was consistent with guilty knowledge …

[23] In respect of the evidence of the accused opening the boot of the car and throwing away the blue package, the learned trial judge opined as follows (see p. 48 appeal record):

> The overt acts of the accused also showed that the accused was aware that the said package was in the boot of the car he was driving, and that that package contained thing or things incriminatory. The evidence was that the accused opened the boot and then removed the said package. To begin with, the accused would have seen that package in the boot when he opened the boot of the car … The further overt act of the accused was to throw the package he had removed from the boot to the right front side of his car … When all things are considered, the situation and overt acts point only to knowledge …

[24] In calling upon the appellant to enter upon his defence the learned trial judge made the following findings (see p. 49 appeal record):

> The aforesaid maximum evaluation of the prosecution evidence shows that by direct evidence the prosecution had proved that the accused was in actual possession of the cannabis in question, and that at the material time of possession the accused was consciously moving the said package containing the said cannabis from one place to another. … The facts and circumstances, and the quantity of cannabis only say that it was trafficking. Even without legal presumptions, there is clear, strong and credible evidence to each ingredient of the offence of trafficking. On that there is no doubt.

[25] Having evaluated the defence of the appellant the learned trial judge concluded as follows (see p. 63 appeal record):

> In a word, the essential defence was that the said package containing cannabis was never in WBB 6888, that there was no nexus between the accused and the package containing cannabis and that the accused opened the boot only to look for tools to fix the puncture to the left front tyre of the car …

[26] Continuing at p. 64 of the appeal record the learned trial judge said:

> … the defence had not put its case – there was a tyre – puncture, … at the earliest possible stage. In addition, the defence had not challenged the testimony of SP5 that the accused threw a package to the right front side of his stationary car, that SP5 informed SP6 of the direction in which the package was thrown, and that the accused was the only person near his stationary car.

[27] Having said that the defence had not put its case at the earliest possible stage the learned judge was of the view that the narrative of the accused was a recent invention in which case he warned himself that he was still bound to consider it based on the authority of *Alcontara Ambross Anthony v. PP* [1996] 1 CLJ 705 in which the Federal Court held (at p. 718):

> … It is settled law that, although a court may view with suspicion a defence which has not been put to the appropriate prosecution witnesses who might have personal knowledge of the points at issue, the court is still bound to consider the defence, however weak, and to acquit if not satisfied that the prosecution has discharged the burden of proof which rests upon it.

The Findings Of The Court Of Appeal

[28] From the records, it appears to us that the thrust of the appellant's appeal before the Court of Appeal was based on the findings of facts by the learned trial judge.

[29] The Court of Appeal as reflected in its judgment (at p. 11 of the appeal record vol. 1) had scrutinized the totality of the evidence and the inferences drawn by the learned trial judge and concluded thus:

> We have scrutinized with great care the totality of the evidence presented before the learned judge and his treatment and analysis of it. Having done so we are unable to detect any appealable error or misdirection on his part. On the contrary, the learned judge has admirably discussed the facts and the irresistible inferences that fell to be drawn from the primary facts.

The Appeal

[30] Before us the judgments of the learned trial judge and the Court of Appeal were attacked on the following grounds:

(1) The learned Judges of the Court of Appeal and the trial Judge had erred in law and fact in finding that the Appellant had the relevant knowledge to prove possession whilst the evidence of the Prosecution witnesses were ambiguous, insufficient and had created inferences leaning towards the Appellant.

(2) The learned Judges of the Court of Appeal and the trial Judge had erred in law and fact in including all the evidence collectively to support the finding of fact sufficient to prove "*mens rea* possession."

(3) The learned Judges of the Court of Appeal and the trial Judge had erred in law and fact when considering the sole fact that the Appellant was on his way from Segamat to Yong Peng with exhibit P6B to arrive at the finding of "*actus reus*" in trafficking and therefore had failed to conclude that the Appellant was merely in "passive possession".

Evidence Of Possession And Knowledge At The Close Of Prosecution's Case

[31] In *Chan Pean Leon v. PP* [1956] 22 MLJ 237, Thomson J dealt with the issue of possession under the Common Gaming Houses Ordinance 1953 and observed (at p. 239):

'Possession' itself as regards the criminal law is described as follows in *Stephen's Digest* (9th Edition, page 304):

> A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.

To put it otherwise, there is a physical element and mental element which must both be present before possession is made out. *The accused must not only be so situated that he can deal with the thing as if it belonged to him, for example have it in his pocket or have it lying in front of him on a table. It must also be shown that he had the intention of dealing with it as if it belonged to him should he see any occasion to do so,* in other words, that he had some *animus possidendi.* Intention is a matter of fact which in the nature of things cannot be proved by direct evidence. It can only be proved by inference from the surrounding circumstances … (emphasis added).

[32] Now, coming back to the instant appeal, at the close of the prosecution's case there was the evidence that the appellant opened the boot of his car and took out the blue package containing the said drugs and threw it away to a spot next to his car.

[33] There was the evidence of conduct on the part of the appellant that after his car skidded, he had refused help from PW5 and his friends. Instead he shooed them away.

[34] There was also evidence that the appellant was seen running away from the scene upon seeing the police arrive even before the discovery of the said blue package containing the drugs (see *Parlan Dadeh v. PP* [2008] 6 MLJ 19 and *Director of Public Prosecutors v. Brooks* [1974] 2 All ER 840).

[35] In the absence of any reasonable explanation by the appellant, we would say that the combined effect of all these evidence is sufficient for the court to make an affirmative finding that the appellant was in possession of the proscribed drugs.

[36] The issue of knowledge necessary to establish possession was considered in *PP v. Abdul Rahman Akif* [2007] 4 CLJ 337 where the Federal Court cited and referred to the case of *Warner v. Metropolitan Police Commissioner* [1968] 2 All ER 356.

[37] In *Warner v. Metropolitan Police Commissioner* (above) Lord Morris, in his judgment had this to say:

> … if, however someone deliberately so assumes control of some of the package or container, then I would think that he is in possession of it. *If he deliberately so assumes control knowing that it has contents, he would also be in possession of the contents. I cannot think that it would be rational to hold that someone who is in possession of a box which he knows to have things in it is in possession of the box but not in possession of the things in it.* If he had been misinformed or misled as to the nature of the contents, or if he had made a wrong surmise as to them, it seems to me that he would nevertheless be in possession of them. (emphasis added).

[38] As such, from the facts before the court, we are satisfied that there was overwhelming evidence of possession of the drugs found in the blue package which the appellant was consciously in the act of conveying.

[39] Again, in *Warner*'s case (above) Lord Wilbeforce held as follows:

> In all such cases, *the starting point will be that the accused had physical control of something – a package, a bottle, a container – found to contain the substance. This is evidence – generally strong evidence of possession. It calls for an explanation.* The explanation will be heard and the jury must decide whether there is genuine ignorance of the presence of the substance, or such an acceptance of the package with all that it might contain, or with such opportunity to ascertain what it did contain or such guilty knowledge with regard to it as to make up the statutory possession. (emphasis added).

Evidence Of Trafficking

[40] Coming now to the element of trafficking, we are of the opinion that since the prosecution have already proved actual possession of the drugs by the appellant and as the weight of the proscribed drugs exceeded 200 grams (cannabis), the presumption of trafficking as provided in s. 37(da) of the DDA ought to be invoked against the appellant.

[41] In our respectful view, the act of the appellant in carrying or transporting a large quantity of drugs ie, 19,152 grams of cannabis in the boot of his car amounted to the act of trafficking of the said drugs as defined under s. 2 of the DDA 1952.

[42] Section 2 of the DDA 1952 provides that:

> 'trafficking' includes the doing of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drugs. (emphasis added)

[43] Therefore, in our judgment, looking at the totality of the evidence before the court, we conclude that there is abundant evidence to support a charge of trafficking, with or without resorting to the presumption of trafficking under s. 37(da) of the DDA 1952.

[44] We feel it is appropriate at this juncture to refer to the "purpose approach" in the judgment of Lord Diplock in the celebrated case of *Ong Ah Chuan v. PP* [1981] 1 MLJ 64 where it was held (at p. 69) as follows:

> Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. *Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did.* Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of any plausible explanation by him, be irresistible – even if there were no statutory presumption such as is contained in section 15 of the Drugs Act. (underlining is mine) (see also *PP v. Ouseng sama – Ee* [2008] 1 CLJ 337)

[45] There is no doubt to us that the evidence in our case supports such inference to be drawn as in *Ong Ah Chuan (supra)*. The same principle was also applied in *Mohamad Yazri Minhat v. PP* [2003] 2 CLJ 65.

Whether There Were Material Contradictions In The Prosecution Evidence

[46] The alleged conflicting testimonies were said to have come from the evidence of PW5 and PW6. PW5 described the appellant's act as 'berlari-lari anak' when he (the appellant) saw the police arrive whilst PW6 described it as 'berlari'. The learned trial judge accepted the evidence as 'the accused ran from the scene' (see p. 47 appeal record).

[47] The Court of Appeal in dealing with the same issue agreed with the learned trial judge on his assessment of the evidence. (see *Andy Bagindah v. PP* [2000] 3 CLJ 289).

[48] It is said often enough that the finding of facts is a matter for the trial judge.

[49] In *Public Prosecutor v. Munusamy* [1980] 2 MLJ 133, the Federal Court had occasion to deal with the issue of concurrent findings of facts and had this to say (at p. 136):

> … Where there have been concurrent findings of facts in the lower Courts it should not be made a practice in the Appeal Court to review these concurrent findings of facts unless it is shown there was no evidence to support the inferences drawn in the lower Courts. … In *Hitam bin Abdullah v. Kok Foong Yee (f) & Anor*, this point was dealt with in slightly more depth by Sir Harry Gibbs. In his judgment his Lordship emphasized that it is very well established that as a general rule, their Lordships' Board will decline to interfere with the concurrent findings of two courts on a pure question of fact.

[50] In a more recent case of *Tan Kim Ho & Anor v. PP* [2009] 3 CLJ 236, the learned Chief Justice, Zaki Tun Azmi reiterated (at p. 252) as follows:

> It is an established principle of law that when dealing with finding of facts, the trial judge is more often than not, in a better position to decide. The appellate court must be reluctant to interfere with such findings, unless the facts obviously disclose the courts below had clearly and wrongly evaluated the facts.

[51] Having said that we would conclude by saying that there were no material contradictions in the prosecution evidence.

[52] Indeed we find that there is no infirmity whatsoever in the concurrent findings of facts by the learned trial judge and the judges of the Court of Appeal which would require our appellate interference.

Conclusion

[53] Having read and reread the judgments of the learned trial judge and the Court of Appeal we agree that looking at the appellant's evidence in totality his (appellant's) denial that he had taken out the blue package from the boot of his car and thrown it nearby is neither credible nor probable.

[54] The appellant's defence that it was the police who had brought the blue package from nowhere is also neither credible nor probable. It is highly improbable to suggest that the police would have left the blue package containing 21 slabs of cannabis at that spot there and framed the appellant. To our minds, the police had no reason or motive to do so. PW5 was an independent witness and had no reason to implicate the appellant.

[55] The reasonable conclusion that we can draw from all these evidence is that the appellant's story that he did not know of the blue package is highly improbable.

[56] We also agree with the learned trial judge and the Court of Appeal that considering the totality of the evidence adduced by the appellant in his defence and weighing it against the prosecutions' evidence we can only come to one conclusion ie, the appellant's defence had failed to raise any reasonable doubt that he was in possession of the drugs in the boot of the car.

[57] For the reasons we had given earlier we would also conclude that the appellant had not raised any reasonable doubt that he was trafficking in the drugs as per the charge.

Order

[58] In view of the authorities cited above and the reasons given we would affirm the order of conviction and sentence by the Court of Appeal.

[59] In the event the appellant's appeal against conviction and sentence is here dismissed.